

EXTENSION OF PROBATIONARY PERIOD APPLICABLE TO
APPOINTMENTS IN THE CIVIL SERVICE

JUNE 23, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1470]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 1470) to amend title 5, United States
Code, to extend the probationary period applicable to appointments
in the civil service, and for other purposes, having considered the
same, report favorably thereon with an amendment and recom-
mend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PROVISIONS RELATING TO PROBATIONARY PERIODS.

(a) IN GENERAL.—Section 3321 of title 5, United States Code, is amended—

(1) in subsection (a), by striking “The President” and inserting “Subject to
subsections (c) and (d), the President”;

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (b) the following:

“(c) The length of a probationary period under paragraph (1) or (2) of subsection
(a), established by rule, regulation, or other action of the President, shall be—

“(1) except as provided in paragraph (2), not less than 2 years; and

“(2) in the case of a preference eligible, not longer than—

“(A) if the appointment (as referred to in subsection (a)(1)) or the initial
appointment (as referred to in subsection (a)(2)) is to a position that exists
on the effective date of this subsection, the length of the probationary pe-
riod which applies to such position as of such effective date; or

“(B) if the appointment (as referred to in subsection (a)(1)) or the initial
appointment (as referred to in subsection (a)(2)) is to a position that does

- not exist on the effective date of this subsection, such length of time as the President may establish, consistent with the purposes of this paragraph.
- “(d) The head of each agency shall, in the administration of this section, take appropriate measures to ensure that—
- “(1) any announcement of a vacant position within such agency and any offer of appointment made to any individual with respect to any such position shall clearly state the terms and conditions of the probationary period applicable to such position;
- “(2) any individual who is required to complete a probationary period under this section shall receive timely notice of the performance and other requirements which must be met in order to successfully complete the probationary period; and
- “(3) upon successful completion of a probationary period under this section, certification to that effect shall be made, supported by a brief statement of the basis for that certification, in such form and manner as the President may by regulation prescribe.”.
- (b) TECHNICAL AMENDMENT.—Section 3321(e) of title 5, United States Code (as so redesignated by subsection (a)(2)) is amended by striking “Subsections (a) and (b) of this section” and inserting “This section”.
- (c) EFFECTIVE DATE.—This section and the amendments made by this section—
- (1) shall take effect 180 days after the date of enactment of this Act; and
- (2) shall apply in the case of any appointment (as referred to in section 3321(a)(1) of title 5, United States Code) and any initial appointment (as referred to in section 3321(a)(2) of such title) taking effect on or after the date on which this section takes effect.

SEC. 2. APPEALS FROM ADVERSE ACTIONS.

- (a) IN GENERAL.—Section 7501(1) of title 5, United States Code, is amended—
- (1) by striking “1 year” the first place it appears and inserting “not less than 2 years”; and
- (2) by striking “1 year” the second place it appears and inserting “2 years”.
- (b) DEFINITION AMENDMENT.—Section 7511(a)(1) of title 5, United States Code, is amended—
- (1) in subparagraph (A)(ii), by striking “1 year” the first place it appears and inserting “not less than 2 years”; and
- (2) in subparagraph (C)(ii), by striking “2 years” the first place it appears and inserting “not less than 2 years”.
- (c) EFFECTIVE DATE.—This section and the amendments made by this section—
- (1) shall take effect 180 days after the date of enactment of this Act; and
- (2) shall apply in the case of any individual whose period of continuous service (as referred to in the provision of law amended by paragraph (1) or (2) of subsection (b), as the case may be) commences on or after the date on which this section takes effect.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The probationary period can be a highly effective tool to evaluate a candidate’s potential to be an asset to the Federal Government

before an appointment to the federal civil service becomes final. The probationary period is the last stage of the assessment process under which a candidate's ability, knowledge, and skills are observed, and a final decision is made in light of those observations. The Committee is concerned however that the probationary period has become a formality, often overlooked as part of the appointment process.

H.R. 1470 provides agencies with additional tools to ensure they meet their responsibility to fairly assess probationers and therefore improve performance management within the Federal Government. The legislation extends the length of the probationary period from one year to a minimum of two years. Lengthening the probationary period provides an individual the opportunity to complete job-related training and begin performing the actual work of the position, thus allowing the person additional time to demonstrate their capabilities. The legislation also clarifies the limitation of certain appeal rights for adverse actions while individuals are on probation.

BACKGROUND AND NEED FOR LEGISLATION

The history of the probationary period dates back to the creation of the federal civil service in the *Pendleton Act of 1883*, which required that there be a period of probation before an appointment becomes final.¹ The probationary period provides the Federal Government with an opportunity to evaluate an individual's conduct and performance on the job to determine if an appointment should become final. Proper use of the probationary period promotes the merit system principle that selection should be determined solely on the basis of relative ability, knowledge, and skills.²

In developing H.R. 1470, the Committee reviewed various studies, reports, and surveys of federal supervisors and employees, who identified various impediments to dealing with poor performance, including the probationary period. Studies suggest that even a small number of poor performers can have a negative impact on the work environment.³ In this regard, general agreement exists that poor performance should be addressed earlier rather than later.⁴ In its report to the Committee, the General Accountability Office (GAO) noted that effective use of probationary periods to rigorously review employee performance is important for developing staff to reach full productivity, and that the probationary period may be viewed as the final opportunity to evaluate performance before permanent appointment.⁵ Similarly, the Merit Systems Protection Board (MSPB) concluded, "If the government does not have a way to quickly and easily correct mistakes that are made in the hiring process, it may be left with a situation that can negatively affect the efficiency of the organization for a long time."⁶

Many federal agencies employ labor forces requiring specialized skills to carry out their duties. New employees must often master

¹ U.S. Statutes at Large 22 (1883): 403.

² 5 U.S.C. 2301(b)(1).

³ U.S. Merit Systems Protection Board, *The Federal Workforce for the 21st Century, Results of the Merit Principles Survey 2000* (Washington, D.C.: 2003).

⁴ U.S. Government Accountability Office, *Poor Performers in the Federal Workplace* GAO-05-812R (Washington, D.C.: June 29, 2005).

⁵ Ibid.

⁶ U.S. Merit Systems Protection Board, *Navigating the Probationary Period* (Washington, D.C.: September 2006).

broad and complex procedures and policies to meet their agencies' missions, necessitating several months of formal training followed by long periods of on-the-job instruction. For example, at the Social Security Administration, a benefit authorizer is provided 8.5 months of formal training, followed by a period of assigned casework that is reviewed until he or she has demonstrated acceptable accuracy and production. The current one year probationary period impedes a fair assessment of the employee's full range of performance. Sufficient time is necessary to determine whether a probationer should be retained.

In its letter to the Committee, the Government Managers Coalition (GMC) discussed the need for management to have adequate time to determine if a new employee has the required skill set to perform the responsibilities of the position for which they were selected. The GMC stated,

“a two-year probationary period would give managers the necessary time to ensure an employee receives training and then has adequate time on the job before the probationary period ends.

“Once on the job, managers have a very small window of time to identify performance issues, counsel the employee and allow the employee to improve. Managers are in the difficult position of having to decide whether or not to keep employees when they have not had sufficient time to evaluate employees. If managers miss the one-year window to dismiss a failing employee, the burden of proof becomes much greater if they decide to do so later. For that reason, managers have an incentive to dismiss the employee prior to the expiration of the one-year window even though the employee has not had sufficient time to show that they could master the job.”⁷

Accordingly, H.R. 1470 lengthens the probationary period from one year to a minimum of two years. Lengthening the probationary period provides individuals the opportunity to complete job-related training and begin performing the actual work of the position. More importantly, it allows candidates more time to demonstrate their capabilities. The legislation maintains agencies' flexibility to lengthen the probationary period for a reasonable fixed duration, provided such probationary periods are uniformly applied. The Committee agrees with the MSPB that the longer probationary period “should not be used to delay action when there is sufficient data to create an informed decision at an earlier date.”⁸

There is a precedent for a longer probationary period. The General Accountability Office requires a two year probationary period for new hires who participate in the Professional Development Program. The Internal Revenue Service has authority to establish a probationary period for up to three years.⁹ Demonstration projects at the National Institute of Standards and Technology and the Department of Commerce gained authority to establish probationary

⁷ Letter to Chairman Issa from Government Managers Coalition, April 12, 2011.

⁸ U.S. Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity* (Washington, D.C.: August 2005).

⁹ 5 U.S.C. 9159(d).

periods of up to three years.¹⁰ These alternative personnel systems “produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general.”¹¹

Lengthening the probationary period supports reform planning underway. In March 2011, the Director of the Office of Personnel Management (OPM), John Berry, asked the Chief Human Capital Officers Council to form a working group to improve government-wide performance management. In discussing the need to improve federal employee performance, Director Berry stated, “Failing to remove poor performers disrespects and demotivates the entire team. And what’s more, we don’t have a position to waste.”¹²

In a January 2011 interview, Department of Homeland Security Chief Human Capital Officer Jeff Neal commented on the need for a longer probationary period, indicating that one year was not enough time to judge new Border Patrol agents and other law enforcement officers. Neal explained that he would like a longer probationary period.¹³

In its 2011 Legislative Issues Brief, the Federal Managers Association expressed support for lengthening the probationary period, noting “The current economic environment requires agencies to take on greater responsibility while receiving fewer resources, and it is critical that members of the federal workforce prove they are up to the challenge of serving the interests of the American public.”¹⁴ Enabling agencies to assess and easily terminate unsatisfactory candidates recognizes this reality, and promotes two other merit system principles: using the federal workforce efficiently and effectively; and retaining employees on the basis of the adequacy of their performance.¹⁵

In addition, the MSPB recommended Congress amend current law to indicate that probationers are not entitled to protections granted to federal employees. The MSPB noted this change “would help support the message that appointment as a Federal employee must be earned through successful performance and is not an entitlement that automatically results from a job offer or physical presence in the workplace.”¹⁶ H.R. 1470 clarifies the limitation of certain appeal rights for adverse actions while individuals are on probation.

The MSPB also examined how agencies were using the probationary period to ensure only the best candidates received finalized appointments as federal employees. The MSPB recommended that OPM establish procedures so that a probationer does not automatically become an employee in the absence of agency action, describing how a probationary period helps the individual understand they have “been given a time-limited opportunity with the burden on the probationer to demonstrate why a finalized appointment is

¹⁰ U.S. Government Accountability Office, *Human Capital: Implementing Pay for Performance at Selected Demonstrates Projects*, GAO-04-83 (Washington, D.C.: Jan. 23, 2004).

¹¹ 75 FR 55160.

¹² Davidson, Joe. “OPM’s John Berry calls for new performance-review system for federal workers,” *Washington Post*, March 16, 2011.

¹³ Losey, Stephen. “Pay Reform: Lawmaker Wants Your Input,” *Federal Times*, March 16, 2011.

¹⁴ Federal Managers Association, 2011 Issue Brief, accessed at <http://fedmanagers.org/public/pdfs/Federal%20Workforce%20Management%202011.pdf>.

¹⁵ 5 U.S.C. 2301(b)(5) and (b)(6).

¹⁶ U.S. Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity* (Washington, D.C.: August 2005).

in the interest of the Government.”¹⁷ H.R. 1470 requires that agencies certify a probationer’s conduct and performance is such that an individual will be an asset to the Federal Government.

Finally, the MSPB discussed the need for agencies to “create a culture in which probationers are treated with respect as candidates for an appointment, but not as Federal employees with finalized appointments.”¹⁸ The MSPB recommended probationers be notified, before accepting a job offer, that they will be probationers. H.R. 1470 requires agencies to define the terms of the probationary period in the vacancy announcement as well as ensure probationers have a full understanding of performance expectations.

LEGISLATIVE HISTORY

The history of the federal probationary period dates back to the creation of the civil service in the Pendleton Act of 1883, which required “that there shall be a period of probation before any absolute appointment or employment aforesaid.”¹⁹ The Civil Service Reform Act provided that:

The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—(1) before an appointment in the competitive service becomes final; and before initial appointment as a supervisor or manager becomes final.²⁰

An individual’s initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.²¹

In 1990, Congress extended full appeal rights to non-preference eligibles in the excepted service.²²

SECTION-BY-SECTION

Section 1. Provisions relating to probationary periods

The probationary period for federal civilian employees is extended from one year to not less than 2 years. Veterans’ preference is maintained for individuals with initial appointments to positions that exist 180 days after enactment of the legislation.

Agency heads must ensure that individuals receive clear guidance of the performance requirements that must be met as part of the probationary period, beginning with the vacancy announcement. Agencies are required to certify an individual’s successful completion of the probationary period, demonstrating that a probationer’s conduct and performance have established that the employee will be an asset to the Federal Government.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ *U.S. Statutes at Large* 22, Chapter 27, January 16, 1883, 403, at 404.

²⁰ P.L. 94–454, Sec. 303(a), October 13, 1978, 92 Stat. 1111, at 1146.

²¹ P.L. 94–454, Sec. 403(a), October 13, 1978, 92 Stat. 1111, at 1162 (section on appointments in the Senior Executive Service).

²² P.L. 101–376, Sec. 2(a), August 17, 1990, 104 Stat. 461.

Section 2. Appeals from adverse actions

Individuals in a probationary status are not entitled to protections from adverse actions granted to employees who have completed their probationary period.

EXPLANATION OF AMENDMENTS

Rep. Dennis Ross offered an amendment in the nature of a substitute that made minor changes to the legislation. The amendment removes the section of the bill that dealt with application of the probationary period to transfers, promotions, demotions, and lateral assignments to guard against a situation where an employee could spend their entire time in a career ladder in a probationary period. The amendment also makes clear that veterans' preference is maintained by keeping the length of the probationary period the same, consistent with current law. The amendment was agreed to by voice vote.

Rep. Cummings offered an amendment in the nature of a substitute that would have replaced the probationary period extension with a GAO study assessing the impact of lengthening the probationary period. The amendment was defeated by a vote of 13–14.

Rep. Connolly offered an amendment in the nature of a substitute that would have replaced the probationary period extension with certain training programs for federal supervisors. Most of the provisions of the amendment would codify existing practices of the federal government, including those established by the *Federal Workforce Flexibility Act of 2004* and the *Fiscal Year 2010 National Defense Authorization Act*. The Connolly amendment was ruled out-of-order by the Chairman because it was non-germane.

COMMITTEE CONSIDERATION

On April 13, 2011, the Committee met in open session and ordered reported favorably the bill, H.R. 1470, as amended, by roll call vote, a quorum being present.

ROLL CALL VOTES

H.R. 1470 (Ross–FL)—To amend title 5, U.S.C., to extend the probationary period applicable to appointments in the civil service, and for other purposes

(1) Cummings amendment to the Ross substitute—defeated by a vote of 13 ayes to 14 noes.

Voting aye: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Connolly, Davis, Braley, Murphy and Speier.

Voting no: Issa, Burton, Platts, Chaffetz, Walberg, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross and Farenthold.

(2) H.R. 1470 was ordered favorably reported, as amended, a quorum being present, by a vote of 15 ayes to 14 noes.

Voting aye: Issa, Burton, McHenry, Chaffetz, Walberg, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross, Guinta and Farenthold.

Voting no: Platts, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Connolly, Davis, Braley, Murphy and Speier.

*** Note: Had they been present at the vote, Mr. Turner and Mr. Walsh both would have been recorded as voting “aye.” By unanimous consent, this was approved for the record.*

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill extends the probationary period for federal civil service employees from one year to not less than two years. H.R. 1470 applies to employees paid according to the General Schedule. As such this bill does not relate to legislative branch employees.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1470 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1470. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the

Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1470 from the Director of Congressional Budget Office:

APRIL 26, 2011.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1470, a bill to amend title 5, United States Code, to extend the probationary period applicable to appointments in the civil service, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1470—A bill to amend title 5, United States Code, to extend the probationary period applicable to appointments in the civil service, and for other purposes

H.R. 1470 would extend the probationary period for federal employees from one year to two years. During that time, an agency is responsible for assessing a candidate for a permanent position or termination. CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the bill could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 1470 would not affect revenues.

Under current regulations, the first year of service for most federal employees is considered a probationary period. During that year, supervisors evaluate an employee's performance and conduct on the job and may remove the employee if necessary. Employees dismissed during this probationary period generally have no right of appeal to the Merit Systems Protection Board. H.R. 1470 would extend the current probationary period to two years. CBO estimates that the legislation would have no significant budgetary effect because it would not change the evaluation process or structure, the total number of federal jobs available, or the oversight of employees.

H.R. 1470 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

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SUBPART B—EMPLOYMENT AND RETENTION

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

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SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

* * * * *

§ 3321. Competitive service; probationary period

(a) **[The President]** *Subject to subsections (c) and (d), the President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—*

(1) * * *

* * * * *

(c) *The length of a probationary period under paragraph (1) or (2) of subsection (a), established by rule, regulation, or other action of the President, shall be—*

(1) *except as provided in paragraph (2), not less than 2 years; and*

(2) *in the case of a preference eligible, not longer than—*

(A) *if the appointment (as referred to in subsection (a)(1)) or the initial appointment (as referred to in subsection (a)(2)) is to a position that exists on the effective date of this subsection, the length of the probationary period which applies to such position as of such effective date; or*

(B) if the appointment (as referred to in subsection (a)(1)) or the initial appointment (as referred to in subsection (a)(2)) is to a position that does not exist on the effective date of this subsection, such length of time as the President may establish, consistent with the purposes of this paragraph.

(d) The head of each agency shall, in the administration of this section, take appropriate measures to ensure that—

(1) any announcement of a vacant position within such agency and any offer of appointment made to any individual with respect to any such position shall clearly state the terms and conditions of the probationary period applicable to such position;

(2) any individual who is required to complete a probationary period under this section shall receive timely notice of the performance and other requirements which must be met in order to successfully complete the probationary period; and

(3) upon successful completion of a probationary period under this section, certification to that effect shall be made, supported by a brief statement of the basis for that certification, in such form and manner as the President may by regulation prescribe.

[(c) Subsections (a) and (b) of this section] *(e) This section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.*

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SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 75—ADVERSE ACTIONS

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SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

§ 7501. Definitions

For the purpose of this subchapter—

(1) “employee” means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed **[1 year]** *not less than 2 years* of current continuous employment in the same or similar positions under other than a temporary appointment limited to **[1 year]** *2 years* or less; and

* * * * *

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) “employee” means—

(A) an individual in the competitive service—

(i) * * *

(ii) who has completed **【1 year】** *not less than 2 years* of current continuous service under other than a temporary appointment limited to 1 year or less;

* * * * *

(C) an individual in the excepted service (other than a preference eligible)—

(i) * * *

(ii) who has completed **【2 years】** *not less than 2 years* of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

* * * * *

MINORITY VIEWS

Currently, federal employees serve a one year probationary period when they are hired into federal service. H.R. 1470 would increase the probationary period to at least two years for the entire federal workforce.

According to the Merit Systems Protection Board, the purpose of the probationary period is “to provide the Government with an opportunity to evaluate an individual’s conduct and performance on the job to determine if an appointment to the civil service should become final.”

It is appropriate that the federal government have a reasonable opportunity to evaluate the ability of new hires. In most cases, one year is an adequate period in which to assess a new employee’s ability to perform. The Committee has not held a single hearing to identify any shortcomings in the current probation period, and it has not received any testimony or evidence from the government explaining why a two year probationary period is needed or how it would improve the efficiency of the federal workforce.

Nevertheless, the Committee decided to report legislation on a party-line vote that would erode protections guaranteed to federal workers without identifying any benefit this would produce. In fact, an across-the-board requirement for a two-year probationary period would undermine the majority’s stated desire to provide federal managers with flexibility to modify probationary periods based on the individual occupation of the employee.

The Committee adopted an amendment by Rep. Ross that eliminates some of the potentially absurd consequences of the original bill. As introduced, H.R. 1470 would have subjected federal employees to a two-year probationary period when they were hired, and then required another two-year probationary period every time they were promoted, transferred, demoted, or reassigned.

While the Committee adopted this amendment and eliminated the absurd possibility that federal employees might spend decades on probation, the manner in which this legislation was drafted suggests a lack of consideration of the impact of the policy change this legislation seeks. The Committee has not conducted any type of assessment to determine whether a lengthening of the current probationary period is needed or would be an improvement over current practice. For these reasons, Ranking Member Cummings offered an amendment to require the Government Accountability Office to conduct a non-partisan, fact-based review of the probationary period and report its findings to Congress. Unfortunately, that amendment was defeated.

Instead of a thoughtfully constructed proposal to help government managers and agencies, this bill degrades the rights of federal employees and denigrates public service. Federal employees care for our veterans, research and fight diseases such as cancer,

respond to natural disasters, ensure that the food we eat is safe, protect our borders, and deliver vital services to our nation's citizens. Given the importance of these functions, Congress has long-recognized the need to promote the federal merit system and protect federal employees from arbitrary personnel actions that do not promote the efficiency of the federal service.

The Merit Systems Protection Board has explained that the primary reason non-probationary employees are granted due process protections against adverse actions is "to keep the civil service free from prohibited personnel practices," including retaliation for whistle-blowing, personnel decisions based on improper political motives, or other non-merit based actions.

The Committee has an obligation to strengthen the civil service and support protections for federal workers that allow civil servants to effectively and efficiently carry out their duties without fear of arbitrary personnel actions or retaliation. H.R. 1470 undermines these important principles.

ELIJAH E. CUMMINGS.

